1890-025 Chancery Causes: William Pennington vs. James H. Kelly
Lee Co.

CH - Debt
T - Property
Migration

To the Hon. John A. Kelly Judge of the Circuit Court of Lee County Virginia

The bill of complaint of William Pennington of said county would respectfully represent. that he is engaged in the Mercantile business at Delphi, in said county. and that about the 3rd day of Feb. 1885. he sold to one Jas. H. Kelly a pistol at the price of $8.00 and the same was to be paid for by him in hauling goods from Rogersville to his place of business at the usual rates of hauling goods from that point: on or about the 4th day of Feb 1885. the said Jas. H. Kelly made preparation to start with his wagon and team to the town of Rogersville for the purpose of bringing a load of goods to pay for said pistol, when your orator who was owing for goods prior to that time bought in Knoxville Tennessee, placed in the hands of the said James H. Kelly the sum of $120.00 in cash with directions to him to carry the same to Rogersville and there transmit the same to Messrs C. M. McClung & Powell & Messrs Coffin & Shields and he promised so to do.

Your Orator states that said Jas. H. Kelly did go to the town of Rogersville at the time stated, but instead of returning with a load of goods, and forwarding the said money so entrusted to him as aforesaid, he sold his wagon and team for cash, put the money in his pocket as your Orator is informed and believes, kept the money your Orator had entrusted to him as aforesaid, and took a western bound train, left the country, and is now a citizen of the state of Oregon

These being the facts in the case, your Orator is advised that the said Jas. H. Kelly has been guilty of a gross breach of trust, in converting your Orators money entrusted to him as aforesaid to his own use, and that your Orator either in a court of law or in equity is entitled to recover damages against him in a sum sufficient to cover the service of said Pistol and the money so made use of by him amounting to $128.00 with legal interest thereon from the 5 day of Feb 1885 and he herewith files as a part hereof an account thereof marked (A) Your Orator therefore alleges that said Jas. H. Kelly is justly indebted to him in said sum of $128.00 with legal interest as aforesaid

Your Orator further states that at the time said Jas. H. Kelly absconded from the state of Virginia as well as now, that he was the owner of and held and held an equitable interest in a tract of land containing some 35 or 40 acres lying and being in said county of Lee, on which his family now live & which was sold to him by his father O. H. Kelly: and Your Orator is advised that said equitable interest so owned by said Jas H. Kelly is liable in a court of equity to be applied to the payment of your Orators said claim and to obtain that relief is the object of this bill: Your Orator therefore prays that said Jas H. Kelly be made defendant to this bill and be required to answer the same fully on Oath, that his interest in said real estate be attached by process of foreign attachment.

and that an order of publication be entered posted & published against him, and upon a hearing of the cause a decree be entered against him in favor of your Orator for $128.00 damages with legal interest thereon from Feb. 5th 1885 till paid and the cost of this suit and that said real estate be deemed to be sold to pay the same or so much thereof as may be necessary for the purpose, and if in anywise Mistaken in his special prayer, then your Orator prays for all general relief. May the commonwealth's writ of Sfa issue directed &c.

Henry J. Morgan P.Q.

C 13.75 to Sept 1887
" 1.44
S 1.00
Pr 5.00
A 15.00
$36.19

William Pennington

vs. } Bill & Foreign Attachment

James H. Kelly.

1885 Apr. Bill Filed
" Spa Eid & home defts
& D Nisi as to these.
" and order Publication.
" May, D. Nisi confd & Cntd
for O. Pub.
" June & July Cont'd
" Aug. Cause set for hearing.
" Over Continued
1886, 1887, 1888 & 1889 Cont'd.
1890, Apr & Sept Cont'd
" Dec. Decree found

Wm Pennington Pltff
vs. } In Chy:
Jas. H. Kelly Dfdt

On calling this cause at the present Term, it was announced at the bar by the counsel for the Pltff, that the claim to enforce payment of which this suit was brought had been fully paid the Pltff

It is thereon ordered that the parties be hence dismissed and the cause stricken from the docket.

Wm Pennington

vs } Dem fend

Jas H. Kelly

Entered Chancy
O.B. page 298
Dec. 2, 1890
J. A. L. Hyatt C.

Enter this
Dec 2. 1890
H.S.K.

Virginia

In the Clerk's office of the circuit Court of Lee County, during vacation, on Wednesday the 25th day of February 1885

Wm. Pennington — Plaintiff
versus
Jas. H. Kelly & others — Defendants
} In Chcy

The object of this suit is to recover against the defendant Jas. H. Kelly the sum of $128.00 with legal interest thereon from the 5th day of February 1885; till paid and the costs of this proceeding, and to subject to the payment thereof the land in the Bill mentioned which has been attached for the purpose; and it appearing from an affidavit filed in this cause that the said Defendant Jas. H. Kelly is a non-resident of this State: It is therefore ordered that he appear here within one month after due publication of this order and do what may be necessary to protect his interest in this suit.

A Copy Teste J. A. S. Hyatt C. C.

W. J. Morgan P. Q.

Wm Pennington
vs } Order Rule
Jas. H. Kelly et als

I, J. A. G. Hyatt Clk &c
do hereby certify that
I delivered to "Lee Co
Sun" an office copy
of this order on the
25th Feb. 1885. for Pub-
~~lication~~ posted a like
copy at the front
door of Lee C. H.
at the March Term
of the County Court
1885 –

J. A. G. Hyatt C.C.

William Pennington Pltff
vs
James H. Kelly & others Defts } In Chcy.

The deposition of Henry M. Pennington and William Pennington taken in the above styled Cause at the Clerk's office of the circuit court for Lee County, on the 27. day of July, 1885, which is intended to be read as evidence on the part of the Plaintiff in the above styled Cause.

The said Henry M. Pennington being duly sworn deposes & says.

Some time during the latter part of the winter or early part of the spring in the year 1885, I sold to the Defendant Jas. H. Kelly a piston at the price of Eight Dollars when we first traded he was to pay money for the pistol, but my Father being a merchant, I afterwards agreed with him that he might discharge the pistol debt, by hauling goods for my father and he agreed so to do. but in a few days afterwards he went to Rogersville Tenn and sold his wagon & team as I am informed and went to

Washington Teritory, when he left home he stated that he was going direct to Knoxville, to have some goods for my father and some for himself, but in stead of doing so, he went to Rogersville and there, as I am informed & believe, sold his wagon & team and went west as before stated — Some three or 4 days before he left home my father asked him in my presence, if he, said Kelly, would carry $120.00 for him (my father) to Knoxville & pay the same out as follows, viz, $80. to Co. M. McClung & Co and $40.00 to Cone and Shields, to which said Kelly replied "that he would do so" and thereupon my father delivered to the said James H Kelly said sum of $120.00 in my presence — and this is the last I have heard of said money letters have been received from said two firms by my father, in which they state that they had not received any money from any such person as said Jas. H. Kelly. And further this witness saith not.

H. M. Pennington

The said William Pennington being duly sworn says.

As well as I now remember in the month of February 1880. I placed in the hands of the Deft, Jas. O'Kelly the sum of $120.00 with directions to him to carry to carry it to Knoxville E. Tenn, and to pay E. M. McClung & Co 80$ thereof and the residue of $40. to Conrad Shields and he received the money of me with the express understanding that he would pay over the money as stated, and bring me a receipt for the same. and within 2 or 3 days thereafter he started with his wagon & team as if he was going to Knoxville Tenn directly, but instead of doing so, as I afterwards learned, he went directly to Rogersville, and there sold his wagon and team and took the cars for the west, as I am informed & believe at all events I have not heard of my money since, I wrote to said two firms, to learn of them whether or not he had paid them

the money according to my direction and they each informed me that he nor any one else had done so, and since that time I have paid said firms and have their receipts for the same.

And further this witness saith not.

William Pennington

The foregoing depositions were taken before me at the time & place & for the purposes stated in the caption, sworn to and subscribed by the witnesses, July 27th 1885.

J. A. S. Hyatt Comr.

Wm Pennington
vs
Jas. D. Kelly et al

Taken before me as Comr. & filed July 27th 1885.
J. A. S. Hyatt Com.

Fee & Comm. 1.50

Wm. Pennington Pltff.
vs. } In Chy.
Jas. H. Kelly & al Defts

I do solemnly swear that in this suit this day instituted in the circuit court of Lee County against Jas. H. Kelly & others. I believe I am entitled to and ought to recover against him the sum of $128.00 with legal interest thereon from the 5th day of Feb. 1885 till paid, that said claim is just, and unpaid, that I have present cause of action against said Kelly therefor, that said Jas H. Kelly has lately absconded from the state of Virginia and is now a resident of the state of Origon, as I am informed and believe, and that said Jas H. Kelly owns or has an equitable interest in a tract of land situated in Lee Co Va. containing 35 or so acres sold to him by his father D. H. Kelly which is liable to be attached for said debt. so help me god.

William Pennington

Sworn to before me Feby. 25th 1885
J. A. S. Hyatt C.

William Pennington

vs } Affidavit

Jas H. Kelly et als

James H. Kelly

1885 To William Pennington Dr.

Feb. 3 To One Large Pistol 8.00

" 4 " Cash placed in your hands to be paid over by you to C. M. McClung & Powell & Coffin & Shields Merchants in Knoxville Tenn and converted by you to your own use this Sum $120.00

Total Sum due Feb 5 1885 $128.00

William Pennington

vs. } Account $125.00

Jas. H. Kelly.

(A)

The Commonwealth of Virginia,

To the Sheriff of Lee County--Greeting:

WE COMMAND YOU to summon Jas. H. Kelly, ~~Alpha Parrott,~~ ~~Henry J. Morgan trustee~~ ~~and W. H. Kelly~~

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House, on the first Monday in April next, being Rule Day, to answer a Bill in Chancery exhibited in our Court against them, by. William Pennington

And have then and there this Writ. Witness, J. A. G. HYATT, Clerk of our said Court, at the Court House, this 25th day of February, 1885, in the 109 year of the Commonwealth.

J. A. G. Hyatt, Clerk.

A Copy---Teste:

The proper affidavit having been made by the Pltff Mr. Pennington, the Officer executing this Spa will attach the land in the bill proceeding mentioned consisting of about 35 or 40 acres, lately held by V. H. Kelly to the deft. Jas. H. Kelly, and on which the deft. Jas. H. Kelly lately resided, and hold the same in his hands so attached, to await the future orders of the Court, Febry 25th 1885.

J. C. Wyatt C. C.

H. J. M

William Pennington
vs } Spa in Chcy
Jas. H. Kelly et als

To April Rules 1885.

Executed by delivering office copies of this Spa to H. J. Morgan trustee and Alpha Parrott March 9th 1885

S H Ewing
Deputy for R. D. Flanary
S. L. C.

By virtue of the order of attachment hereon endorsed I have levied this Spa in Chancery on the tract of land lately held by V. H. Kelly to the defendant Jas. H. Kelly and which is his family nor liner containing 35 or 40 acres lying and being in the County of Lee, this 25th day of Febry 1885 at 11 o'clock A. M.

S H Ewing
Deputy for R. D. Flanary S. L. C.

VIRGINIA—In the Clerk's office of the Circuit Court of Lee County, during vacation, on Wednesday, the 25th day of February, 1885

IN CHANCERY.

William Pennington Plaintiff versus Jas H Kelley and others Defendants

The object of this suit is to recover against the defendant, Jas H Kelly, the sum of $128 00, with legal interest thereon from the 5th day of February, 1885, till paid and the costs of this proceeding, and to subject to the payment thereof the land in the bill mentioned which has been attached for the purpose; and it appearing from an affidavit filed in this cause that the said defendant, Jas H Kelly, is a non resident of this State: It is therefore ordered that he appear here within one month after due publication of this order and do what may be necessary to protect his interest in this suit.

A copy—teste:

J A G HYATT, C C

H J MORGAN, P Q

Publisher's Certificate.

JONESVILLE, VA., March 20th, 1885.

I, A. M. Gorins, Publisher of the LEE COUNTY SUN, a weekly newspaper published at Jonesville, Lee County, Virginia, do certify that the annexed Chancery Order was published four successive weeks in said newspaper, publication ending March 20th, 1885.

A. M. Gorins, Publisher.

R. A. AYRES,
Attorney at Law,
ESTILLVILLE, - - - VIRGINIA.

Pub Fee $6.00

Wm Pennington

vs } Dub. Certif

Jas. H. Killyt al

Dub. Fee A.M.'s $5.00